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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1961

No. 907

ALBIN P. LASSITER, ET AL.,

Appellant,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellee.

RAGAN D. MADDEN, ET AL.,

Appellant,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellee.

F. JEAN PHARIS, ET AL.,

Appellant,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellee.

(CONSOLIDATED CASES.)

Appeal from the United States District Court for the Western District of Louisiana.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

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District Attorney,
3rd Judicial District;
F. JEAN PHARIS,
District Attorney,
9th Judicial District;
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New Orleans 12, Louisiana;
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Appeal from the United States District Court for the Western District of Louisiana.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

STATEMENT AS TO JURISDICTION.

Appellants, Albin P. Lassiter, Ragan Madden and F. Jean Pharis, appeal from the judgment of the United States District Court for the Western District of Louisiana, sitting as a three-judge court, entered on the 25th

day of January, 1962, declaring unconstitutional Louisiana Revised Statutes Title 45, Sections 1301-1305, and enjoining the appellants from enforcing any of the provisions of the aforesaid statutes; and appellants further submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW.

The opinion of the United States District Court for the Western District of Louisiana is not yet reported; however, the judgment of the Court and the reasons therefor are attached hereto as Appendix "A."

JURISDICTION.

These proceedings were brought under 28 U. S. C. 1336 and 1345, 49 U. S. C. 16 (2); 43 and 322 (b); and 28 U. S. C. 2281-4.

The judgment and reasons therefor were entered on January 25, 1962, and the notice of appeal filed on February 20, 1962.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. 1253.

STATUTE INVOLVED.

The statute involved in these proceedings is Act 27 of 19[illegible] of the Louisiana Legislature (L. R. S. 45:1301-136[illegible]

QUESTIONS PRESENTED.

May the United States Court grant to the Attorney General of the United States the rights to prosecute suits when the United States Congress has specifically refused to grant this power?

Is the interpretation given to Section 180 A of the Interstate Commerce regulations by the Commission correct and if so does that section violate the provisions of the Interstate Commerce Act?

Did the Court err in permitting this matter to be tried without the Louisiana Public Service Commission being joined as an indispensable party?

Is there any evidence to justify the Courts finding that the Louisiana Statute involved creates a burden on Interstate Commerce?.

STATEMENT OF THE CASE.

The three consolidated cases involved herein were filed against the appellants, certain interstate carriers and certain other defendants against whom no judgment was rendered.

This litigation was born out of injunctive proceedings filed in three judicial districts in Louisiana by appellants, district attorneys of their respective parishes, seeking enforcement of LRS 45:1301-1305. The state courts issued injunctions requiring compliance with LRS 45:1301-1303. The carriers within the jurisdiction of the state courts complied with the orders.

The instant litigation was instituted by the U. S. Attorney General and the I.C.C. seeking to set aside the Louisiana Statute on the grounds that it violated the 14th Amendment, violated Sec. 180A of the regulations of the I.C.C. and placed an undue burden on interstate commerce, and further to enjoin enforcement of the statute by state officials.

The suits were consolidated for trial and most of the factual issues were disposed of by stipulations between the parties.

On January 5, 1962, the three judge court heard the motions made on behalf of appellants, additional testimony and argument. The court considered the matter and on January 25, 1962 entered the judgment herein, following which the appellants filed their notice of appeal on February 20, 1962.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The issues presented herein present a well-defined encroachment of the executive and judicial branches into fields specifically reserved to the Congress of the United States by the United States Constitution.

In the case at bar the court permitted the United States Attorney General to champion the cause of unknown individuals who purportedly were deprived of equal protection under the Fourteenth Amendment to the United States Constitution. Standing alone this might seem to be an unwarranted extension of executive power by the judiciary. In light of the refusal of the United States Congress to grant this power to the Attorney General, despite

a specific request, this clearly presents an unwarranted, unconstitutional usurpation of legislative prerogative. This refusal is clearly set forth in the legislative history of the 1957 and 1960 Civil Rights Acts.

Basically the adoption of part 180-A "Discrimination In Operations of Interstate Motor Carriers of Passengers" gave birth to these proceedings. Section 4 of said regulation which reads as follows:

> "No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin."

and sections 10 (a) and (b) which read as follows:

> "As used in these regulations in this part the term 'terminal facilities' means all facilities, including waiting room, rest room, eating, drinking, and ticket sales facilities which a motor common carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation.
>
> "As used in § 180-A 4, the term 'separation' includes, among other things, the display of any

sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used or otherwise distinguished on the basis of race, color, creed, or national origin."

are the critical parts of this regulation. Appellants argue, with considerable support from the proceedings leading up to the adoption of the regulations, that the word "terminal facilities" should be interpreted so as to encompass only that area or facilities which the carrier makes available to interstate passengers.

Report of the Interstate Commerce Commission in matter, Number MC-C-3358, pp. 12 and 13.

"Section 3 of the proposed regulations, dealing with terminal facilities, would provide that:

"'No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race, color, creed, or national origin. **As used in this regulation the words "terminal facilities" mean all facilities including waiting room, rest room, eating, drinking and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation.'** (Emphasis supplied.)

"The meaning of the term "terminal facilities" affects not only section 3 but sections 4 and 5 of the proposed regulations as well. The definition of this term is phrased in the language of the Supreme Court in Boynton v. Virginia, supra, applying section 216 (d)."

The *Boynton* case referred to *Boynton v. Virginia*, 364 U.S. 454, substantiates the commission's original thinking and supports the proposed regulation as amended, which reads as follows:

"Report of Interstate Commerce Commission in matter Number MC-C-3358, Appendix A.

"Section 3: No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any **terminal facilities** which are so operated, arranged or maintained as to involve any separation of any portion thereof or in the use thereof of the basis of race, color, creed, or national origin. **As used in this regulation the words 'terminal facilities' mean all facilities including waiting room, rest room, eating, drinking and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation."** (Emphasis added.)

The final result, 180A 10 (a), *supra*, goes far beyond the discussions of the commission and beyond the language of the Boynton case. As interpreted by the commission and the Court, the control over passengers riding

on motor carriers is no longer determined by point of origin and destination, but now by the nature of the carrier used. If this be true, the I.C.C. will dictate nearly every phase of transportation. To be sure it will solve the federal-state spheres of authority by dissolving the latter. Aside from changing the hereto existing law and jurisprudence respecting the spheres of federal-state influence, these regulations as interpreted repeal and re-enact in different form, a controlling portion of Part II the I.C.C. act, namely, 49 U.S.C. 316 (e), which reads in part as follows:

> "Provided, however, that nothing in this chapter shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, **or for any service connected therewith,** for the purpose of removing discrimination against interstate commerce or for any other purpose whatever." (Emphasis supplied.)

The Court below erred in not maintaining the state's motion to dismiss for failure to join indispensable party, the Louisiana Public Service Commission.

The universal rule for determining whether a party defendant is indispensable is set forth in *Turner v. Brookshear*, 271 Fed. (2) 761 and reads as follows:

> "Prior to the adoption of Rule 19 (a) of the Federal Rules of Civil Procedure, 28 U.S.C.A., it was well settled that an indispensable party is one who has such an interest in the subject matter of the controversy that a final decree cannot be rendered between the other parties to the suit without affecting his interest, or without leaving the controversy

in such a situation that its final determination may be inconsistent with equity and good conscience.[3] Rule 19 (a) did not change the former rule. The Third Circuit has expressly so held.[4] This Circuit and the United States Supreme Court have so held by implication, by recognizing and applying the old rule since the adoption of Rule 19 (a)."[5]

The Louisiana Public Service Commission has passed a rule and regulation which is more comprehensive and far reaching than the expression of the Legislature of Louisiana as contained in R.S. 45:1301, *et seq.* The lower Court in declaring the statute unconstitutional and failing to make the Louisiana Public Service Commission a party defendant has left this question unsettled as the railroad companies and bus companies in the State of Louisiana operate under a franchise from the Louisiana Public Service insofar as intrastate travel is concerned. It would be inconsistent with equity and good conscience to leave them in this dilemna.

The resolution of the Public Service Commission above referred to may be found at Appendix C.

A review of the record will reveal that there was no evidence adduced at the trial of this cause showing that any burden was imposed on interstate commerce by the passage of R.S. 45:1301-1305 or by the actions of the appellant district attorneys or anyone acting in any official capacity on behalf of the state or on behalf of the carriers.

It is clear from the language of the statute and from its application that intrastate passengers were effected by said statute.

CONCLUSION.

It goes without saying that this is a government of law and not of men, and, accordingly, government agencies or high public officials cannot be permitted to institute proceedings on matters not within the jurisdiction granted them by either the Constitution of the United States or the Congress of the United States.

Accordingly, the decision of the District Court should be revised and set aside.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Capitol,
Baton Rouge, Louisiana;

ALBIN P. LASSITER,
District Attorney,
4th Judicial District;

RAGAN D. MADDEN,
District Attorney,
3rd Judicial District;

F. JEAN PHARIS,
District Attorney,
9th Judicial District;

GEORGE PONDER,
Assistant Attorney General,
Supreme Court Building,
New Orleans 12, Louisiana;

WILLIAM P. SCHULER,
Assistant Attorney General,
Supreme Court Building,
New Orleans 12, Louisiana.

PROOF OF SERVICE.

I, William P. Schuler, Assistant Attorney General for the State of Louisiana, and attorney for appellants herein and a Member of the Bar of the Supreme Court of the United States, do hereby certify that copies of the foregoing Jurisdictional Statement for appellants were served upon the parties through their counsel of record, hereinbelow named by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereto annexed, as follows:

1. On the Attorney General of the United States by mailing a copy in a duly addressed envelope with airmail postage prepaid to:

St. John Barrett,
U. S. Department of Justice,
Washington, D. C.;

T. Fitzhugh Wilson,
U. S. Attorney for the
Western District of Louisiana,
Shreveport, Louisiana.

2. On the United States of America by mailing a copy in a duly addressed envelope with airmail postage prepaid to:

The Solicitor General,
Department of Justice,
Washington 25, D. C.

3. On the Interstate Commerce Commission by mailing a copy to its counsel of record with airmail postage prepaid to:

Bernard A. Gould, Attorney,
State Commerce Commission,
Washington 25, D. C.

4. On Continental Southern Line, Inc., defendants, by mailing a copy to their counsel of record in a duly addressed envelope with airmail postage prepaid to:

Grove Stafford and John L. Pitts,
Stafford & Pitts,
628 Murray Street,
Alexandria, Louisiana.

5. On the Kansas City Southern Railway Company, defendants, by mailing a copy to their attorney of record in a duly addressed envelope with airmail postage prepaid to:

Arthur R. Carmody, Jr.,
Wilkinson, Lewis, Madison & Woods,
Beck Building,
Shreveport, Louisiana.

6. On the Louisiana and Arkansas Railway Company, defendants, by mailing a copy to their counsel of record in a duly addressed envelope with airmail postage prepaid to:

T. W. Holloman,
White, Holloman & White,
728 Murray Street,
Alexandria, Louisiana.

WILLIAM P. SCHULER,
Assistant Attorney General.

APPENDIX A.

Before BROWN and WISDOM, Circuit Judges, and DAWKINS, JR., and PUTNAM, District Judges.

* * * * * * *

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DEGREE

These three cases having come on for hearing on January 5, 1962, upon the plaintiffs' motions for preliminary injunctions and each of the plaintiffs and defendants being represented by counsel, the Court having heard testimony and argument, all parties having stipulated that the evidence and argument might be considered by the Court in each of these cases in connection with the granting or denial of permanent injunctive relief, and the Court being of the view that the plaintiffs are entitled to judgment, the Court now enters it findings of fact, its conclusions of law and final decree. The findings are based upon evidence which is entirely uncontradicted and most of which was agreed to by stipulation of the parties prior to the hearing. The findings, conclusions and degree are entered by Circuit Judges Brown and Wisdom and District Judge Dawkins in Actions Nos. 8567 and 8593, and by Circuit Judges Brown and Wisdom and District Judge Putnam in Civil Action No. 8612. Each Judge subscribes to and adopts as his own findings, conclusions and decree all of the findings, conclusions and decree of the Court in each case upon which he sat and joined in rendering judgment.

FINDING OF FACT

1. Continental Southern Lines, Inc., is a common carrier by motor vehicle engaged in the transportation of

passengers in interstate and intrastate commerce to, from and through Alexandria, Monroe, and Ruston, Louisiana. The Interstate Commerce Commission has issued to Continental a certificate of public convenience and necessity authorizing and requiring it to provide transportation of passengers, baggage, express, mail and newspapers in interstate commerce to and from those three cities. The Louisiana Public Service Commission has issued a similar certificate to Continental with respect to transportation in intrastate commerce. In the discharge of its obligation under these certificates and for the comfort and convenience of its passengers, Continental maintains passenger terminals in Alexandria, Monroe and Ruston.

2. The Louisiana & Arkansas Railway Company (hereinafter referred to as L & A) is a common carrier by rail engaged in the transportation of passengers in interstate commerce to, from and through Alexandria, Louisiana. One hundred percent of the stock of L & A is owned by The Kansas City Southern Railway Company (hereinafter referred to as K C S). A majority of the officers and at least some of the operating employees of the two railways are common employees of both. The L & A owns and operates a passenger terminal in Alexandria in discharge of its obligations under the Interstate Commerce Act and for the comfort and convenience of its passengers. The passenger trains of the L & A which stop at the terminal are in through service between Kansas City, Missouri, and New Orleans, Louisiana.

3. On November 7, 1955, the Interstate Commerce Commission entered its order in Docket No. 31423 (297 ICC 335) requiring K C S to cease and desist, on or before

January 10, 1956, and thereafter to abstain from practicing the undue and unreasonable prejudice and disadvantage found to exist by the Commission, including the maintenance in its terminals of waiting rooms designated for the exclusive use of Negro passengers. A copy of this order was served upon K G S.

4. On September 22, 1961, the Interstate Commerce Commission entered its order in a proceeding entitled "Discrimination in Operations of Interstate Motor Carriers of Passengers," Docket No. MC-C-3358, adding Section 180.1(a) to Title 49 of the Code of Federal Regulations. The regulations set forth in Section 180.1(a) became effective on November 1, 1961, and provide, among other things, that no common carrier by motor vehicle in interstate commerce shall, in the operation of its vehicles in interstate commerce, provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race or color. The regulations further provide that the term "terminal facilities" includes waiting room, restroom, eating, drinking and ticket sales facilities which the carrier makes available to passengers of a motor vehicle operated in interstate commerce as a regular part of its transportation, and that the term "separation" includes the display of any sign indicating that any portions of the terminal facilities are operated, allocated, restricted, provided, available, used or otherwise distinguished on the basis of race or color.

5. On or about November 1, 1961, Continental, in compliance with the regulations of the Interstate Com-

merce Commission which became effective on that day, removed from its terminals in Alexandria, Monroe and Ruston, Louisiana, certain signs which it had previously maintained designating certain of the terminal facilities for the use of "white intrastate" passengers and other facilities for the use of "interstate passengers and colored intrastate" passengers. On November 6, K C S and the L & A, in compliance with the requirements of federal law, removed similar signs which they had previously maintained in the L & A railway passenger terminal in Alexandria.

6. On November 1, 1961, Mack E. Barham, as Judge of the Fourth Judicial District of Louisiana, issued, upon petition of the State of Louisiana, brought by Albin P. Lassiter as District Attorney of that District, a temporary restraining order restraining Continental and Ernest Hall, its terminal manager in Monroe, from violating Sections 1301 through 1305 of Title 45 of Louisiana Revised Statutes and requiring Continental and Hall to replace in the terminal the signs removed on November 1. On November 3, 1961, Walter M. Hunter, as Judge of the Ninth Judicial District of Louisiana, issued, upon a like petition brought by F. Jean Pharis as District Attorney of that District, a similar temporary restraining order directed to Continental, its President Morgan W. Walker, its Vice President and General Manager R. W. McClendon, and its local terminal manager in Alexandria H. Paul Miller. On November 13, 1961, another and similar temporary restraining order was issued upon a like petition brought by Ragan D. Madden, District Attorney of the Third Judicial District of Louisiana, by J. R. Dawkins, Judge of that District, directed to Continental, Walker, McClendon and O. F. Nealy, operator of the terminal used

by Continental in Ruston. Each of these three state court orders was complied with by Continental, its officers, employees and agents by replacing in the terminals in Alexandria, Monroe and Ruston the signs which had been removed on November 1.

7. On November 10, 1961, F. Jean Pharis filed a second petition for the State of Louisiana with the District Court for the Ninth Judicial District of Louisiana asking that K C S and the L & A be restrained from violating Sections 1301 through 1305 of Title 45 of the Louisiana Revised Statutes and requiring them to replace the signs which had been removed from the terminal on November 6. Judge Walter M. Hunter issued a temporary restraining order as prayed for and the two rail carriers, in compliance with the order, replaced the signs on or about November 11.

8. All of the signs above referred to are presently being maintained in the terminals and will continue to be maintained unless this Court grants injunctive relief.

9. The signs in the terminal have the effect of separating all passengers, whether interstate or intrastate, according to their race. No effort is made by the carriers or by the local officials to exclude white interstate passengers from the facilities designated for the use of white intrastate passengers and those facilities are in fact used by all white persons regardless of the character of their journey. On the other hand, the facilities designated for "interstate and colored intrastate" passengers are used exclusively by persons of the Negro race and are not used by white persons. Testimony of witnesses did show that

on some unidentified occasion in the past Negroes were seated in the portion of the various bus stations reserved for "white intrastate passengers" and that they were not molested by the employees of the companies; they were not asked to find other seats; no report was made to local police authorities. It does not appear whether local authorities ever had knowledge of such occurrences. No action was taken by them. Likewise, testimony of the bus company personnel reflected that they did not examine tickets of any passenger to ascertain whether they were inter or intrastate travelers for the purpose of seating such persons in the terminal. The record further shows without contradiction, as reflected by the certified copy offered by the Attorney General of Louisiana in connection with the motion to dismiss for failure to join the Louisiana Public Service Commission as an indispensable party, that such Commission promulgated in 1939 the following mandatory rule as to motor carriers:

> "All carriers transporting passengers shall segregate white and colored passengers, and shall provide equal but separate accommodations for the white and colored races, by providing separate vehicles or separate compartments on each vehicle, or by dividing the vehicle by a partition or by a readily legible sign indicating such partition; and shall maintain at all its stations equal but separate waiting rooms or space, and separate ticket windows for the white and colored races."

10. The defendant district attorneys stipulate and the Court finds that they will, unless restrained by order of this Court, continue to enforce Sections 1301 through 1305 of Title 45 of the Louisiana Revised Statutes.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of these actions under Sections 1336 and 1345 of 28 U. S. C. and Sections 16(12), 43 and 322(b) of 49 U. S. C.

2. Inasmuch as the plaintiffs in each of these cases seek an injunction to restrain the enforcement, operation and execution of a statute of the State of Louisiana by restraining the action of officers of the State in the enforcement of the statute, each of these cases is properly heard by a court of three judges under 28 U. S. C. 2281. Each of these cases being properly before a court of three judges, the Court may dispose of all issues which are raised in the cases. Florida Lime & Avocado Growers, Inc. v. Jacobsen, 362 U. S. 73, 80 S. Ct. 568, 4 L. Ed. (2d) 568 (1960).

3. The Attorney General has standing to bring these suits in the name of the United States to restrain and remove an unconstitutional interference with and burden upon interstate commerce. In Re Debs, 158 U. S. 564, 15 S. Ct. 900, 39 L. Ed. 1092 (1895); U. S. v. Mayor and Selectmen of McComb City, C. A. No. 3215, unrpt'd. (S.D. Miss., Nov. 22, 1961); U. S. v. U. S. Klans, Knights of the Ku Klux Klan, 194 F. Supp. 897 (M.D. Ala., 1961). Insofar as these actions involve violations of Part II of the Interstate Commerce Act and regulations thereunder (bus terminals), the Interstate Commerce Commission may itself, or by its designated agent, maintain the actions under Section 322(b) of Title 49. I. C. C. v. Blue Diamond Products Co. (Three-judge court, S. D. Iowa, 1950) 93 F. Supp. 688. Insofar as these actions involve violations of Part I of the Interstate Commerce Act and the Commis-

sion's order of November 7, 1955, (railroad terminals), either the Interstate Commerce Commission or the Attorney General may maintain the action under the provisions of Section 16(12) of Title 49. Both the rail and bus aspects of the litigation may be maintained by either the Commission or the Attorney General under 49 U. S. C. 43.

4. The defendant district attorneys and judges of Louisiana are properly joined as parties defendant in these actions under 49 U. S. C. 42. B & C Truck Leasing, Inc. v. I. C. C., 283 F. (2d) 163 (C.A. 10, 1960); Lamb v. I. C. C., 259 F. (2d) 358 (C.A. 10, 1958); Drum v. United States and I. C. C., 193 F. Supp. 275 (W. D. Okla., 1960).

5. In maintaining separate facilities for the separate use of the white and Negro races and in maintaining signs which designate those facilities for such use, Continental Southern Lines, Inc., is violating Paragraph 4 of Section 180(a) of Title 49 of the Code of Federal regulations and Section 316(d) of Title 49 U. S. C.

6. The Kansas City Southern Railway and the Louisiana & Arkansas Railway, in maintaining separate facilities for the separate use of the white and Negro races in their passenger terminal in Alexandria and in maintaining signs designating the facilities for such use, are violating the terms of the Order of the Interstate Commerce Commission entered in Docket Number 31423 (N.A.A.C.P. v. St. Louis-San Francisco Railway Co., 297 I.C.C. 335) and Section 3(1) of Title 49 U. S. C.

7. Continental Southern Lines, Inc., The Kansas City Southern Railway and the Louisiana & Arkansas

Railway, in maintaining separate facilities designated for the separate use of the white and Negro races in their terminals in Alexandria, Monroe and Ruston, are violating the provisions of the Interstate Commerce Act even though they take no action to enforce such separate use. Baldwin v. Morgan, 289 F. (2d) 750 (C.A. 5, 1961).

8. Sections 1301-1305 of Title 45 of the Louisiana Revised Statutes, in requiring the separation of passengers according to race in the terminal facilities of all common carriers and the posting of signs designating the facilities for such separate use, violate the equal protection clause of the Fourteenth Amendment and impose an undue burden upon interstate commerce in violation of the Commerce Clause of Article 1, Section 8 of the Constitution. Accordingly these sections of the Louisiana statutes are unconstitutional, null and void. Morgan v. Virginia, 328 U. S. 373, 66 S. Ct. 1050, 90 L. Ed. 1317 (1946); Mitchell v. U. S., 313 U. S. 80, 94, 61 S. Ct. 873, 877, 85 L. Ed. 1201, 1210 (1941).

9. Sections 1301-1305 of Title 45 of the Louisiana Revised Statutes, in requiring all common carriers to maintain signs designating certain of their terminal facilities for the separate use of intra-state passengers of the white race and other facilities for the separate use of all other passengers, is in conflict with the provisions of Paragraph 4 of Section 180a of the Code of Federal Regulations, of the Order of the Interstate Commerce Commission in Docket Number 31423 (N.A.A.C.P. v. St. Louis-San Francisco Railway Company, 297 I.C.C. 335) and of Sections 3(1) and 3(d) of Title 49 U.S.C., and they are accordingly unconstitutional, null and void under the

Supremacy Clause of Article 6 of the Constitution. See State of Georgia v. U. S. and I. C. C., C.A. No. 7758, N.D. Ga., December 19, 1961; U. S. v. John J. Fraiser, Jr., C.A. No.G-C-27-61; N. D. Miss., November 21, 1961; U. S. v. Mayor and Selectmen of McComb City, supra.

10. Upon the facts herein found the plaintiffs are entitled to injunctive relief as a matter of law. 49 U.S.C. 16(12), 42, 43 and 322(b); U. S. v. Wood ... F. (2d) , (C.A. 5, October 27, 1961). Neither 28 U. S. C. 2283 nor the so-called "doctrine of abstention" prevents the granting of such relief. Leiter Minerals, Inc., v. U. S., 352 U. S. 220, 77 S. Ct. 287, 1 L. Ed. (2d) 267 (1957); Morrison v. Davis, 252 F. (2d) 102 (C.A. 5, 1958), cert. denied, 356 U. S. 968; U. S. v. Wood, supra.

11. (a) The Court requested the Attorney General of Louisiana to submit exceptions, comments, suggestions and criticisms of the proposed findings of fact, conclusions of law and decree to be submitted by the plaintiffs. This was done by letter memorandum dated January 12, 1962, addressed to the presiding Judge. This is ordered filed. To the extent not accepted, it is deemed overruled and full exception is hereby noted and allowed.

(b) The following motions of the Attorney General of Louisiana were made and overruled:

1. Lack of jurisdiction over the subject matter.
2. The failure to join an indispensable party, namely, the Louisiana Public Service Commission.

3. That the complaint failed to set forth grounds upon which relief could be granted.

4. That this was a case where the doctrine of abstention should be applied.

DECREE.

IT IS ORDERED that Continental Southern Lines, Inc., Morgan W. Walker, R. W. McClendon, Ernest Hall, H. Paul Miller and O. F. Nealy, together with their officers, employees, agents, representatives and all persons in active concert or participation with them, be and they hereby are enjoined:

(a) from maintaining or permitting the maintenance in the terminals used by Continental Southern Lines in Alexandria, Monroe and Ruston, Louisiana, any signs indicating that any portion of the terminal facilities is separated, allocated, restricted, provided, available, used or otherwise distinguished on the basis of race or color;

(b) from failing forthwith to remove all signs presently located in the beforementioned terminals which make any distinction in the use of the facilities upon the basis of race or color;

(c) from implementing or in any other way giving force or effect to the provisions of Sections 1301 through 1305 of Title 45 of the Louisiana Revised Statutes, and

(d) from violating in any manner or by any means, in connection with the operation or use

of any passenger terminals within Louisiana, of Paragraph 4 of Section 180a of Title 49 of the Code of Federal Regulations.

IT IS FURTHER ORDERED that The Kansas City Southern Railway Company and the Louisiana & Arkansas Railway Company, together with their officers, employees, agents, representatives, and all persons in active concert or participation with them, be and they hereby are enjoined:

(a) from maintaining or permitting the maintenance in the terminal used by The Kansas City Southern Railway and the Louisiana & Arkansas Railway in Alexandria, Louisiana, any signs indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used or otherwise distinguished on the basis of race or color;

(b) from failing forthwith to remove all signs presently located in the terminal used by The Kansas City Southern Railway and the Louisiana & Arkansas Railway in Alexandria which make any distinction in the use of the facilities upon the basis of race or color;

(c) from implementing or in any other way giving force or effect to the provisions of Sections 1301 through 1305 of Title 45 of the Louisiana Revised Statutes;

(d) from violating in any manner or by any means the order of the Interstate Commerce Commission entered on November 7, 1955, Docket

No. 31423, N.A.A.C.P. v. St. Louis-San Francisco Railway Company (297 ICC 335); and

(e) from violating in any manner or by any means the provisions of 49 U. S. C. 3 (1) in the operation of terminals used by either of these rail carriers in the transportation of passengers in interstate commerce within the State of Louisiana.

IT IS FURTHER ORDERED that Albin P. Lassiter, F. Jean Pharis and Ragan D. Madden, together with their successors, agents, employees and all persons in active concert or participation with them, be and they hereby are enjoined:

(a) from proceeding further in Civil Action No. 63487 in the Fourth Judicial District of Louisiana; Civil Actions Nos. 56936 and 56978 in the Ninth Judicial District Court of Louisiana, or in Civil Action No. 18239 in the Third Judicial District Court of Louisiana, except to dismiss such actions, and from enforcing or taking any steps to enforce the temporary restraining orders heretofore issued by said courts in those actions;

(b) from enforcing or implementing in any manner or by any means the provisions of Sections 1301 through 1305 of Title 45 of the Louisiana Revised Statutes:

IT IS FURTHER ORDERED that the Court retains jurisdiction of each action and each of the defendants for such further orders and relief as may be appropriate in further implementation of this decree.

IT IS FURTHER ORDERED that each party bear its own costs.

The United States Marshal is directed to serve a copy of this order upon each of the defendants and upon the Governor and the Attorney General of the State of Louisiana by delivering a copy to each.

Signed this 25th day of January, 1962:

s/ JOHN R. BROWN,
Circuit Judge

s/ JOHN MINOR WISDOM,
Circuit Judge

s/ BEN C. DAWKINS, JR.,
District Judge

s/ RICHARD J. PUTNAM,
District Judge

APPENDIX B.

PART VII. WAITING ROOM FACILITIES (NEW)

§1301. Accommodations for white passengers traveling intrastate

All common carriers of passengers for hire, providing waiting room and reception room facilities, shall provide separate accommodations for white passengers traveling in intrastate travel, which accommodations shall bear a sign on which shall be painted or shown in bold letters the words, "WHITE WAITING, INTRASTATE PASSENGERS."

§1302. Accommodations for other passengers traveling intrastate or interstate

All such common carriers providing waiting room and reception room facilities shall provide separate accommodations for all other passengers whether traveling in intrastate or interstate travel which shall bear a sign on which shall be painted or shown in bold letters the words, "WAITING INTERSTATE PASSENGERS AND COLORED INTRASTATE PASSENGERS."

§1303. Separate toilets and separate facilities for drinking water

There shall also be provided where such accommodations are furnished, separate toilets and separate facilities for drinking water for white intrastate passengers; and separate toilets and separate facilities for drinking water for all other passengers whether in intrastate or interstate travel which shall be designated by signs the same as those provided for waiting or reception facilities.

§1304. Equality of accommodations

The accommodations furnished shall be equal for both white and colored passengers.

§1305. Injunction against violation; penalty; each day of violations as separate offense

A. The district attorney of the judicial district or parish wherein a violation of this Part occurs shall institute action in the state district court to enjoin such violation, for and in the name of the state of Louisiana.

B. Any person or common carrier violating the provisions of this Part shall be deemed guilty of a misdemeanor, and, upon conviction therefor, shall be punished by fine of not less than one hundred dollars or more than five hundred dollars and imprisonment in the parish jail for not less than thirty days or more than six months.

C. Each day that such person or carrier refuses or fails to comply with the provisions of this Part shall be considered a separate and distinct offense.

APPENDIX C.

LOUISIANA PUBLIC SERVICE COMMISSION RESOLUTION

WHEREAS, certain complaints have recently come to the attention of this Commission alleging failure on the part of certain common carrier motor passenger lines in Louisiana, and street railways under this Commission's jurisdiction, to make the proper segregation of the white and colored races on their passenger carrying vehicles; and

WHEREAS, Act No. 111 of the Louisiana Legislature of 1890, commonly known as the "Jim Crow" law, applies only to railroad passenger coaches (except street railways) and makes no mention of motor passenger buses operated over the highways, since no such vehicles were in existence at the time this Act was passed; and

WHEREAS, although it has been tacitly understood that a similar rule requiring the segregation of the white and colored races applied to motor buses, no definite pronouncement to that effect has heretofore been made by this Commission, and it is desirable that a specific rule to that effect be established.

NOW THEREFORE BE IT RESOLVED, that on and after the date hereof, all passenger carrying motor vehicles and street railways operating within the State of Louisiana under the jurisdiction of this Commission shall observe the following rule:

"All carriers transporting passengers shall segregate white and colored passengers, and shall pro-

vide equal but separate accommodations for the white and colored races, by providing separate vehicles or separate compartments on each vehicle, or by dividing the vehicle by a partition or by a readily legible sign indicating such partition; and shall maintain at all its stations equal but separate waiting rooms or space, and separate ticket windows for the white and colored races."

(Signed) Wade O. Martin, Chairman

(Signed) James P. O'Connor, Commissioner

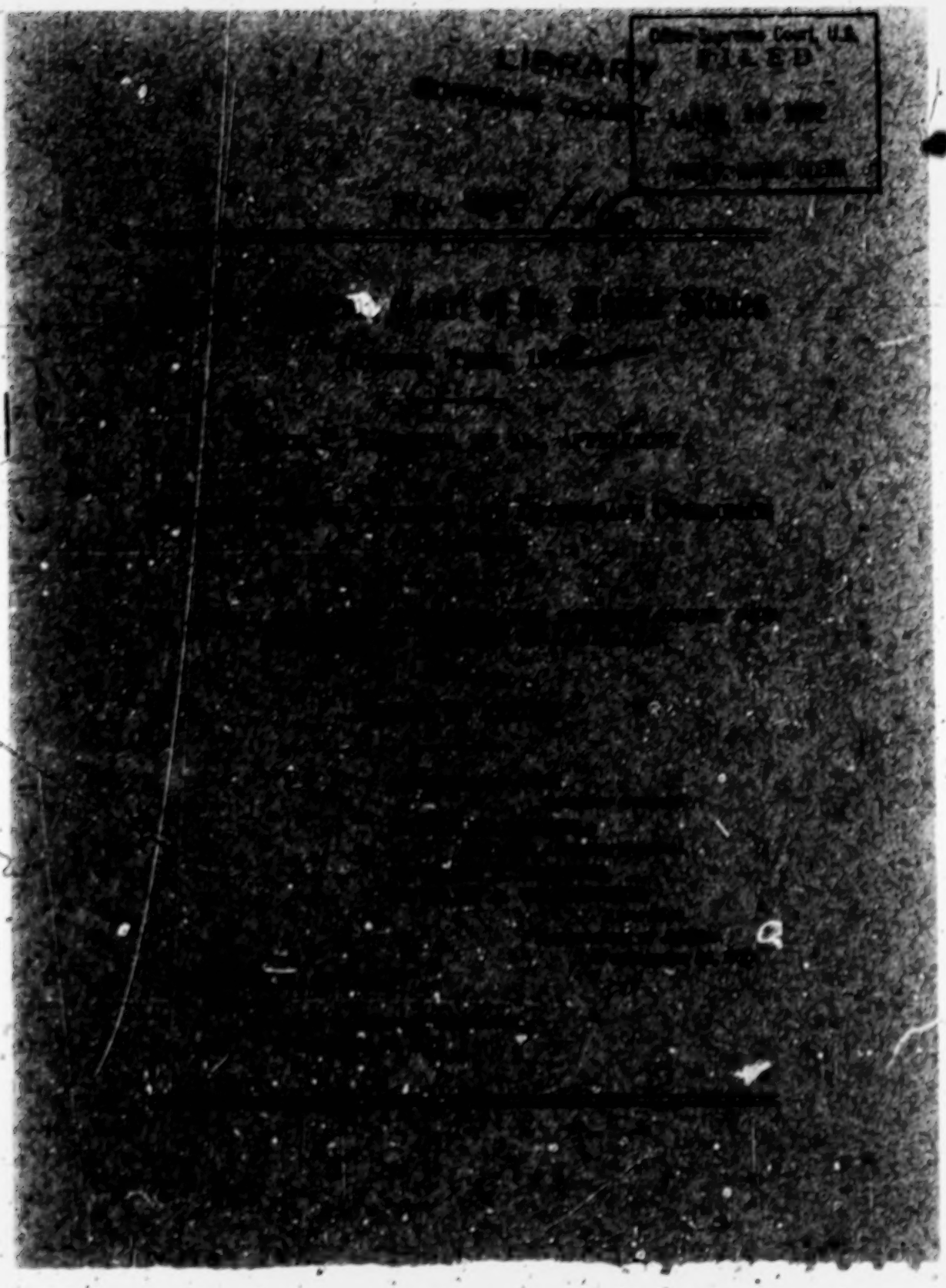
(Signed) John S. Patton, Commissioner.

BY ORDER OF THE COMMISSION:

Baton Rouge, Louisiana
May 12th, 1939
(((SEAL)))

(Signed) P. A. Frye, Secretary

Attest: A true copy: (Signed) P. A. Frye, Secretary.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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 967

ALBIN P. LASSITER, ET AL., APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

QUESTIONS PRESENTED

1. Whether the three-judge district court correctly held that the Attorney General had standing to bring these suits in the name of the United States.

2. Whether Louisiana statutes requiring motor carriers to post signs in terminals indicating different facilities for Negro and white passengers violated the Fourteenth Amendment.

3. Whether the court correctly held that the Louisiana transportation segregation statutes involved impose an undue burden on interstate commerce.

4. Whether the Interstate Commerce Commission's regulations prohibiting discrimination by motor carriers in any terminal used in interstate commerce, and the Commission's interpretation of those regulations, violate the Interstate Commerce Act.

5. Whether the Louisiana Public Service Commission was required to be joined as an indispensable party.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court in the Western District of Louisiana convened pursuant to 28 U.S.C. 2281. In three actions (*United States* v. *Lassiter, United States* v. *Madden,* and *United States* v. *Pharis*), which were consolidated in the district court, the United States and the Interstate Commerce Commission sued to enjoin bus and railroad officials and state officers from enforcing racial discrimination in bus and railroad terminals used in interstate commerce on the ground that this constituted unlawful interference with interstate commerce in violation of Section 8, Article I of the Constitution of the United States, the Interstate Commerce Act, and the regulations of the Interstate Commerce Commission adopted thereunder. Insofar as the actions were against state officials the plaintiffs also relied on the Fourteenth Amendment. In the *Pharis* case, the United States and the Interstate Commerce Commission also sought enforcement of an order of the Interstate Commerce Commission.

Since these cases are similar, we will recite the facts in only the *Pharis* case in detail, noting whatever slight variations exist in the *Madden* and *Lassiter* cases.

1. *The Bus Terminal.*—Prior to November 1, 1961, Continental Southern Lines, Inc. and H. Paul Miller, the manager of the Continental bus terminal in Alexandria, Louisiana,[1] maintained a sign on the exterior wall above one entrance of the Alexandria bus terminal reading "WHITE WAITING, INTRASTATE PASSENGERS" and two signs, one over the outside of each of the two doors to the rear of the terminal waiting room, reading "WAITING, INTERSTATE PASSENGERS AND COLORED INTRASTATE PASSENGERS." Continental and H. Paul Miller also maintained, prior to November 1, 1961, separate toilet facilities in the terminal for white and colored passengers and posted signs over the facilities designating for which race they were maintained. These actions were specifically required by 45 La. Rev. Stat. (1961 Cum. Supp.) 1301–1305.

On September 22, 1961, acting pursuant to Part II of the Interstate Commerce Act, the Interstate Commerce Commission issued regulations which, *inter alia*, prohibit any motor carrier subject to Section 216 of the Interstate Commerce Act from using any terminal facilities in the operation of vehicles in interstate commerce, "which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin." "Separation," within the meaning of the regulation, is defined to include the display of any sign indicating that any portion

[1] The *Madden* and *Lassiter* cases involved racial segregation in bus terminals of Continental Southern Lines located in Ruston and Monroe, Louisiana, respectively.

of the terminal facilities is restricted on a racial or religious basis. This regulation became effective on November 1, 1961.[2]

On October 31, 1961, Continental, in compliance with the regulations of the Interstate Commerce Commission, removed the signs described above and posted the required public notice setting forth the full text of the regulations.

On November 3, 1961, acting under 45 La. Rev. Stat. 1301–1305, the District Court for the Ninth Judicial District of Louisiana, upon petition of F. Jean Pharis, District Attorney for the Ninth Judicial District, issued a temporary restraining order against Continental, Morgan W. Walker (president of Continental), R. W. McClendon (vice-president and general manager of Continental), and Miller enjoining them from violating 45 La. Rev. Stat. 1301–1303 and ordering them to replace the racial signs at the bus terminal. On November 3, 1961, Continental, in compliance with the order of the Louisiana court, replaced the racial signs in the bus terminal.

2. *The Railroad Terminal.*—Prior to November 6, 1961, the Kansas City Southern Railway Company

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[2] The rule-making proceeding which resulted in the nondiscrimination regulations was instituted by the Commission following a petition filed by the Attorney General. The Commission's decision and regulation are reported at 86 M.C.C. 743 and are reprinted in the Appendix to the Motion to Affirm in *Georgia* v. *United States*, No. 963, this Term, pp. 11–33. The regulations are codified as 49 C.F.R. 180a and are published in the Federal Register at 26 Fed. Reg. 9166.

The history of these regulations is described in greater detail in the Motion to Affirm in *Georgia* v. *United States*, *supra*, pp. 2–4.

and Louisiana & Arkansas Railway Company[2] maintained at the railroad terminal in Alexandria signs similar to those maintained at the Continental bus terminal in Alexandria, and also maintained separate toilet facilities for Negroes and whites. This practice was followed despite the decision of the Interstate Commerce Commission in *National Association for the Advancement of Colored People v. St. Louis-San Francisco Railway Company*, 297 I.C.C. 335. In that case, the Commission, on November 7, 1955, made a finding that certain practices of various railroads, including Kansas City Southern, "in assigning or directing Negro interstate passengers to coaches or portions of coaches designated or provided for the exclusive use of such passengers, and in maintaining waiting rooms in their stations designated for the exclusive use of such passengers, subject Negro passengers to undue and unreasonable prejudice and disadvantage, in violation of section 3(1) of the [Interstate Commerce] Act." 297 I.C.C. at 347–348. The Commission, on the same day, entered an order requiring Kansas City Southern to cease and desist before January 10, 1956, from practicing the undue and unreasonable prejudice and disadvantage which the Commission had found to exist. Prior to January 10, 1956, Kansas City Southern was served with a copy of the Commission's order of November 7, 1955.

On November 6, 1961, all racial signs were removed from the premises of the railroad terminal and the separation of toilet facilities by race at the railroad

[2] The Louisiana & Arkansas Railway Company is a wholly owned subsidiary of Kansas City Southern.

terminal was discontinued. On November 10, 1961, acting under 45 La. Rev. Stat. 1301–1305, the District Court for the Ninth Judicial District of Louisiana, upon petition of F. Jean Pharis, issued a temporary restraining order against the Kansas City Southern and Louisiana & Arkansas Railway Company enjoining them from violating 45 La. Rev. Stat. 1301–1305 and ordering them to replace the racial signs at the railroad terminal. On November 11, 1961, Kansas City Southern and Louisiana & Arkansas, in compliance with the order of the Louisiana court, replaced the racial signs in the railroad terminal.

3. *The complaint.*—In order to eliminate unlawful racial discrimination in the Alexandria bus and rail terminals, the United States and the Interstate Commerce Commission filed a complaint on November 22, 1961, in the United States District Court for the Western District of Louisiana seeking declaratory and injunctive relief against District Attorney Pharis, Walter M. Hunter, District Judge of the Ninth Judicial District of Louisiana, Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company, Continental Southern Lines, Inc., Walker, McClendon, and Miller.[4] The complaint requested that

[4] In *Lassiter* the defendants were Albin P. Lassiter, District Attorney of the Fourth Judicial District of Louisiana, Mack E. Barham, District Judge of the Fourth Judicial District of Louisiana, Continental Southern Lines, Inc., and Ernest Hall (the manager of the Continental bus terminal in Monroe, Louisiana). In *Madden*, the defendants were Ragan D. Madden, District Attorney of the Third Judicial District of the State of Louisiana, J. R. Dawkins, District Judge of the Third Judicial District of Louisiana, Continental Southern Lines, Inc.,

the court: (a) declare 45 La. Rev. Stat. 1301–1303 unconstitutional; (b) enjoin Walter M. Hunter and F. Jean Pharis from proceeding further in the actions, and from enforcing any order against Kansas City Southern, Louisiana & Arkansas, Continental Southern, Walker, McClendon, and Miller and from otherwise enforcing or implementing 45 La. Rev. Stat. 1301–1303; (c) enjoin Kansas City Southern, Louisiana & Arkansas, Continental Southern, Walker, McClendon, and Miller from placing or maintaining in or near the terminals operated by them in Alexandria, Louisiana, any signs indicating that any terminal facilities are for the use of persons of any particular race or color; (d) enjoin all the defendants from maintaining or requiring the maintenance of separate facilities in the terminal for Negroes and whites. On January 25, 1962, the district court, having heard argument and testimony, issued its findings of fact, conclusions of law and decree (203 F. Supp. 20; J.S., App. A). The court declared 45 La. Rev. Stat. 1301–1305 to be unconstitutional and granted injunctive relief against the defendants substantially in accord with that prayed for in the complaint. Only District Attorneys Pharis, Albin P. Lassiter, and Roger Madden have appealed to this Court.

ARGUMENT

1. The Attorney General clearly had standing, on behalf of the United States, to bring these actions.[5]

Walker, McClendon, and O. F. Nealy, the last three being employees of Continental.

[5] In *Bailey* v. *Patterson*, 369 U.S. 31, and *Turner* v. *City of Memphis*, 369 U.S. 350, this Court held that a three-judge court

Section 2322 of Title 28 U.S.C. provides that all actions to enforce Interstate Commerce Commission orders "shall be brought by or against the United States." Similarly, 49 U.S.C. 16(12) provides that the United States, "by its Attorney General," may apply to any district court for the enforcement of Commission orders. Insofar as the *Pharis* case was against Kansas City Southern, Louisiana & Arkansas, and their officials, it is an action to enforce a Commission order, *i.e.*, the order in *N.A.A.C.P. v. St. Louis-San Francisco Railway Company*, 297 I.C.C. 335, prohibiting segregation of these railroads' waiting rooms. Under principles similarr to aiding and abetting in criminal law (cf. 18 U.S.C. 2), Section 2322 allows suits not only

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need not be convened under 28 U.S.C. 2281 where the constitutional issues are "settled beyond question." Consequently, when a three-judge court has erroneously been convened, appeal is to the court of appeals rather than to this Court just as if a single judge had heard the case. *Turner* v. *City of Memphis*, *supra*, 369 U.S. at 353. As we will show below (p. 11), the unconstitutionality of the Louisiana statutes was settled beyond question by this Court's decisions in *Bailey* and *Turner*.

Nonetheless, this Court has jurisdiction of this appeal, unlike in *Bailey* and *Turner*, because this cause was brought by the United States, not by private parties. The matter is appealable directly to this Court under 49 U.S.C. 45, the Expediting Act, which provides that "[i]n every civil action brought in any district court of the United States under * * * chapters 1, 8, 12, 13 and 19 of this title * * * wherein the United States is complainant, an appeal from the final judgment of the district court will lie only to the Supreme Court." Since these actions were brought under 49 U.S.C. 16(12) and 322(b) (J. S. App. A. 19), which are a part of chapters 1 and 8 of Title 49, respectively, this Court clearly has jurisdiction.

It does not matter that these cases were heard by a court

against the carriers and their officials, but also against persons, like the appellants, who caused them to violate the Commission order.

Section 322(b) of 49 U.S.C. provides that if any motor carrier operates in violation of any provision of the Interstate Commerce Act or of any regulation issued thereunder, the Commission "or its duly authorized agent" may apply to a district court of the United States for enforcement of the regulation. Again, the power to enforce the substantive provisions of the Section must be read to authorize relief against those who seek to cause the carriers to violate it. See *S.E.C.* v. *Timetrust, Inc.*, 28 F. Supp. 34 (N.D. Cal.). Inasmuch as the Commission appointed the Attorney General as its duly authorized agent under Section 322(b), the Attorney General had clear standing to bring these actions.

The Elkins Act, 49 U.S.C. 42, 43, also confers specific statutory standing on the Attorney General with respect to both bus and railroad terminals. Under Section 43, whenever there is reasonable ground for

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of three judge (convened prior to the decision in *Bailey*), since each of them adopted the court's findings, conclusions, and orders as his own. 203 F. Supp. 20, 21. Accordingly, the decision of the district court may be deemed that of a single judge. See *Public Service Commission* v. *Brashear Lines*, 312 U.S. 621, 626; *Healy* v. *Ratta*, 67 F. 2d 554 (C.A. 1); *Cannonball Transportation Co.* v. *American Stages*, 53 F. 2d 1050 (S.D. Ohio); *Nelson* v. *Jessup*, 134 F. Supp. 218 (S.D. Ind.).

the belief that a common carrier is engaging in discrimination forbidden by law, suit may be brought on the direction of the Attorney General, with or without a request from the Interstate Commerce Commission. This Section also provides that persons (other than carriers) may be made parties as the court may deem necessary. Likewise, Section 42 provides that in any proceeding for the enforcement of statutes relating to interstate commerce it shall be lawful to include as parties, in addition to the carrier, all persons interested in, or affected by, the practice under consideration and that orders and decrees may be made with reference to such additional parties to the same extent as are authorized with respect to the carriers.[6]

Even in the absence of statutory authorization, the Attorney General may obtain equitable relief, particularly where there has been an interference with the constitutional rights of American citizens, against unlawful interference with interstate commerce (*In re Debs*, 158 U.S. 564; *United States* v. *U.S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897 (M.D. Ala.); *United States* v. *City of Montgomery*, 201 F. Supp. 590 (M.D. Ala.)) or deliberate violation of the orders and regulations of the Interstate Commerce Commission (*United States* v. *Mayor and Selectmen of McComb City*, C.A. No. 3215, S.D. Miss., November 22, 1961). Cf. *United*

[6] The purpose of Section 42 is to render I.C.C. enforcement more effective. H. Rep. No. 3765, 57th Cong., 2d Sess., p. 6 (1903). Parties have been enjoined under Section 42 from continuing practices which caused the carrier to violate, or prevented it from complying with the Act. See, *e.g.*, *United States* v. *Baltimore & Ohio Railroad*, 333 U.S. 169, 171–172, note 2; *R. & C. Truck Leasing, Inc.* v. *I.C.C.*, 283 F. 2d 163 (C.A. 10).

States v. *San Jacinto Tin Co.*, 125 U.S. 273; *Sanitary District* v. *United States*, 266 U.S. 405; *United States* v. *California*, 332 U.S. 19; *United States* v. *Republic Steel Corp.*, 362 U.S. 482. Here the complaints alleged that the defendants had both interfered with interstate commerce and disobeyed the Commission's order and regulations.

2. Appellants contend (J.S. 5–8) that the Commission's regulations governing discrimination by interstate motor carriers, as interpreted by the Commission and the court below, violate the Interstate Commerce Act by improperly regulating intrastate commerce. They reason that the Commission had no authority to prohibit segregation in portions of terminals used for intrastate passengers even though other portions of the same terminals were used by interstate passengers.

a. Regardless of the validity of the Commission's regulations, the decision of the district court must be sustained. First, the district court correctly held (J.S. App. A, 21) that 45 La. Rev. Stat. 1301–1305 plainly violates the Fourteenth Amendment. As this Court declared in *Bailey* v. *Patterson*, 369 U.S. 31, 33: "We have settled beyond question that no State may require racial segregation of interstate or intrastate transportation facilities." See also *Turner* v. *City of Memphis*, 369 U.S. 350. Since the only appellants here are state officials attempting to enforce racial segregation under the Louisiana Statute, *Bailey* and *Turner* control this case.

Secondly, the court below concluded that 43 La. Rev.

Stat. 1301–1305 imposed an undue burden on interstate commerce in violation of Article 1, Section 8, of the Constitution (J.S. App. A, 21). This holding was also correct. These Louisiana statutes apply to *all* common carriers and travellers, interstate as well as intrastate. They have the effect of requiring interstate carriers, like those involved in these cases, either to partition or separate their terminal facilities or to construct separate terminal facilities for intrastate and interstate commerce. If the carriers do not go to this expense, interstate passengers will be required to use segregated facilities. Statutes imposing such burdens on interstate carriers and passengers plainly interfere with interstate commerce and are unconstitutional on their face. See *Morgan* v. *Virginia*, 328 U.S. 373; *Henderson* v. *United States*, 339 U.S. 816; *Boynton* v. *Virginia*, 364 U.S. 454; *Matthews* v. *Southern Railway System*, 157 F. 2d 609 (C.A. D.C.); cf. *Whiteside* v. *Southern Bus Lines*, 177 F. 2d 949 (C.A. 6); *Chance* v. *Lambeth*, 186 F. 2d 879 (C.A. 4).

b. In any event, the Commission's regulations, and their application in these cases, are consistent with the provisions of the Interstate Commerce Act. *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210 (M.D. Ala.); *United States* v. *Mayor and Selectmen of McComb City*, *supra*; *United States* v. *Fraiser*, C.A. No. G–C–27–61 (N.D. Miss.). Section 203(a)(19) of the Act expressly extends the Commission's jurisdiction to all vehicles and facilities of motor common

carriers operating in interstate commerce.* See *Boynton* v. *Virginia*, 364 U.S. 454, 459–460. Thus, the Commission's jurisdiction to prohibit discrimination under Section 216 includes all vehicles and terminals used by motor carriers in interstate commerce. When the same carriers' vehicles and terminals are used in both interstate and intrastate commerce, the Commission retains authority over them. See *Southern Ry. Co.* v. *United States*, 222 U.S. 20, 27; *Baltimore & Ohio R.R.* v. *Interstate Commerce Commission*, 221 U.S. 612; *Morris* v. *McComb*, 332 U.S. 422.

Contrary to appellants' contention, the regulations of the Commission, both in terms and as applied here, regulate only interstate commerce. They prohibit any "motor common carrier of passengers subject to section 216 of the Interstate Commerce Act" from utilizing terminal facilities "in the operation of motor vehicles in interstate or foreign commerce" which maintain "any separation of any portion thereof, or in the use thereof, on the basis of race, color, creed, or national origin." 86 M.C.C. 743, 754, 755. Thus, the

* Section 203(a)(19) of the Act, 49 U.S.C. 303(a)(19), provides: "The 'services' and 'transportation' to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith."

Commission's regulations were intended, and were applied here, to prevent segregation of any part of a terminal when the terminal was used in interstate commerce.

The Commission has power under the Act to regulate—hence to prohibit discrimination—throughout an interstate facility, even though the carrier has designated part of it as an intrastate facility. This is particularly true when, as we have seen (p. 12), the discrimination in the so-called intrastate portion of the terminal results in placing a burden on interstate carriers and discriminates against interstate passengers. The indirect effect of the regulations on intrastate commerce, resulting from the mixing of intrastate and interstate commerce in the same terminal, does not take away from the fact that the Commission is engaged in regulating interstate commerce within the scope of its authority under the Act. For a fuller discussion of a similar contention, see our Motion to Affirm in *Georgia* v. *United States, supra*, pp. 5–10.[9]

3. Appellants contend (J.S. 8) that the Louisiana Public Service Commission is an indispensable party since it has adopted a resolution requiring a greater degree of racial segregation than the statutes declared

[9] Appellants also argue (J.S. 8) that the Commission's regulations "repeal and re-enact in different form a controlling portion of Part II the I.C.C. Act, namely, 49 U.S.C. 316(e) * * *." That section provides that "nothing in [the Interstate Commerce Act] shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate

unconstitutional by the district court.[10] According to appellants, the district court, by failing to require the joinder of the Louisiana Public Service Commission, "has left [the validity of the Commission's resolution] unsettled as the railroad companies and bus companies in the State of Louisiana operate under a franchise from the Louisiana Public Service insofar as intrastate travel is concerned" (J.S. 9). But no question has been left in doubt, for a State cannot require segregation of either interstate or intrastate transportation.

This Court has held that the "indispensability of parties is determined on practical considerations" (*Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 54), and that the "determination of the question of indispensability of parties is dependent, not on the nature of the decision attacked, but on the ability and authority of the defendant before the court to effectuate the relief which the [plaintiff] seeks" (*Ceballos* v. *Shaughnessy*, 352 U.S. 599, 603). In short, "the test of indispensability is whether the absent party's interest

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transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever." Since this proviso is in terms limited to the "rate, fare, or charge" for intrastate transportation, it has no relevance here.

[10] The resolution of the Louisiana Public Service Commission requires racial segregation on carriers as well as in terminal facilities (see J.S. App. C, p. 29).

in the subject matter of the litigation is such that no decree can be entered in the case which will do justice between the parties actually before the court without injuriously affecting the rights of the absent party." *Lawrence* v. *Sun Oil Co.*, 166 F. 2d 466, 469 (C.A. 5). See also *Shields* v. *Barrow*, 17 How. 129, 139; *Chance* v. *Buxton*, 170 F. 2d 187, 188 (C.A. 5); *Gauss* v. *Kirk*, 198 F. 2d 83 (C.A. D.C.). The Louisiana Public Service Commission was not required to be a defendant in order to effectuate the relief sought by the plaintiffs, nor has the failure to join the Commission in any way affected its rights. All that the plaintiffs sought in this case was to enjoin the illegal acts of the defendant carriers and law enforcement officers and to have 45 La. Rev. Stat. 1301–1305 declared unconstitutional. That is precisely what the decree does.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the district court should be affirmed.

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